

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 82-133)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow: "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: July 20, 1982.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Pan American World Airways, Inc., 200 Park Ave., New York, NY; American Casualty Co. of Reading, PA (PB 7/17/80) D 7/17/82 ¹	June 29, 1982	July 17, 1982	New York Seaport \$300,000

The foregoing principal has been designated as a carrier of bonded merchandise.

¹ Surety is The Travelers Indemnity Co.

BON-3-01

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

Recent Customs Service Decisions Unpublished in the Customs Bulletin

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of \$0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

The microfiche referred to above contains rulings/decisions published or listed in the Customs Bulletin, many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of \$0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost (\$0.15) per sheet of fiche.

It is anticipated that additions to both sets of microfiche will be made quarterly. Requests for subscriptions for the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: July 14, 1982.

B. JAMES FRITZ,

Director,

Regulations Control and Disclosure Law Division.

Date	Number	Issue
04-07-82	069099	Classification: log skidder tires (772.50, 772.51)
06-16-82	069601	Classification: plastic holder for potted plants (772.15, 774.55)
06-21-82	105421	Vessels: A mobile deck platform may move between coastwise points without carrying merchandise or passengers, but may not be towed between those points by foreign tugs (46 U.S.C. 883, 46 U.S.C. 289, 46 U.S.C. 316(a))
06-22-82	105535	Instruments of International Traffic: Satellites imported into the United States for processing then exported for launch are not eligible for designation as instruments of international traffic
06-28-82	105623	Vessels: Vessel repairs in the nature of permanent additions to the hull and fittings are non-dutiable repairs. There is no remission for repairs made to conform with Coast Guard or Maritime Administration requirements (19 U.S.C. 1466)
06-22-82	105635	Aircraft Export Manifesting Requirements: An aircraft proceeding from port to port in the United States to lade export merchandise or passengers for discharge outside the United States, may obtain clearance for a foreign port at each U.S. port of lading by presenting a manifest of the cargo or passengers laden at each port
06-28-82	105642	Vessels: Repairs made to bring vessel equipment into compliance with Coast Guard requirements do not qualify as a casualty under 19 U.S.C. 1466
06-17-82	105656	Vessels: A foreign-built United States-flag vessel may transport merchandise between Guam and the continental United States (46 U.S.C. 11)
06-25-82	105668	Vessels: Repairs effected in order to bring vessel navigational equipment into compliance with Federal regulatory requirements are not remissible (19 U.S.C. 1466)
06-22-82	105670	Vessels: Replacement of pipes which are not in a poor or deteriorated condition are considered an addition or alteration to the hull and fittings not dutiable under 19 U.S.C. 1466
06-21-82	105680	Instruments of International Traffic: Bags made of nylon and polyethylene used to transport clay between Georgia and Japan are instruments of international traffic (19 U.S.C. 1322(a))
06-25-82	105689	Vessels: A foreign-built and/or foreign-flag vessel may not be used to transport passengers in coastwise trade (46 U.S.C. 239)
06-25-82	105697	Vessels: The charter of a United States-built vessel to a foreign business entity does not affect its entitlement to engage in the coastwise trade (46 U.S.C. 808, 46 U.S.C. 883)
04-20-82	802491	Classification: Men's reversible garment, woven on one side and knit on the reverse (379.89)

Date	Number	Issue
05-03-82	802609	Classification: Concrete curing blanket (355.25, 389.62, 774.55)
04-19-82	802690	Classification: chrome tanned chamois leather (121.15)
06-02-82	802838	Classification: lens polisher in plastic container and embroidered badges (493.10, 740.38)
06-09-82	803148	Classification: personal electronic printer (676.25)

Decisions of the United States Court of Customs and Patent Appeals

(Appeal No. 82-28 Sugar)

1. SUMMARY JUDGMENT—COURT OF INTERNATIONAL TRADE
UPHOLDING VALIDITY OF PRES. PROC. 4941—QUOTAS OF
IMPORTED SUGAR; AFFIRMED

Grant of summary judgment by the Court of International Trade upholding the validity of Presidential Proclamation 4941, by which quotas were imposed on the importation of sugar, is *affirmed*.

2. GENEVA PROTOCOL IS TRADE AGREEMENT UNDER TRADE
EXPANSION ACT OF 1962

The Geneva Protocol is a trade agreement under § 201 of the Trade Expansion Act of 1962 and Note 1 is a part thereof.

3. ID. DATED WITHIN AGREEMENT ENTRY PERIOD IN § 201(A)

The Geneva Protocol is dated June 30, 1967, and is thus within the agreement entry period specified in § 201(a).

4. ID. NOTE 1 ADDED TO TSUS

The language of Note 1 in the Geneva Protocol was added, virtually verbatim, to the TSUS as Headnote 2, subpart A, part 10, schedule 1.

5. PRESIDENT ACTED WITHIN HIS AUTHORITY WHEN ISSUING
PROCLAMATION 4941 TO CARRY OUT TRADE AGREEMENT

The President was acting within the authority delegated to him in § 201 of the Trade Expansion Act of 1962 when, in conformity with Headnote 2, he issued Proclamation 4941 to carry out the trade agreement embodied in the Geneva Protocol, of which Note 1 is an integral part.

6. AUTHORIZED PRESIDENTIAL ACTION IMMUNE FROM JUDICIAL
SCRUTINY

The President's action being authorized by statute, his motives, his reasoning, his finding of facts requiring the action, and his judgment, are immune from judicial scrutiny.

F. 2a

UNITED STATES CANE SUGAR REFINERS' ASSOCIATION, APPELLANT *v.*
JOHN R. BLOCK, SECRETARY OF AGRICULTURE, DONALD T.
REGAN, SECRETARY OF THE TREASURY, WILLIAM E. BROCK,
UNITED STATES TRADE REPRESENTATIVE, APPELLEES

(Appeal No. 82-28)

United States Court of Customs and Patent Appeals, July 14,
1982, appeal from a grant of summary judgment upholding the va-
lidity of Presidential Proclamation 4941.

[Affirmed.]

Daniel F. Mayers, Daniel Marcus, and William F. Marmon, Jr., of Washington,
D.C., attorneys for appellant.

David M. Cohen and James R. Walczak, of Washington, D.C., attorneys for appel-
lees.

[Oral argument on June 30, 1982 by *Daniel Marcus* for appellant and *David M. Cohen* for appellees.]

Before MARKEY, Chief Judge, RICH, MILLER, and NIES, Associate
Judges, and SMITH, Judge.*

MARKEY, Chief Judge.

[1] Appeal from a grant of summary judgment upholding the va-
lidity of Presidential Proclamation 4941, by which quotas were im-
posed on importation of sugar. We affirm.

BACKGROUND

On May 5, 1982, the President issued Proclamation 4941. On May
11, 1982, the United States Cane Sugar Refiners' Association (Asso-
ciation) filed an action challenging its validity. On June 5, 1982,
Judge Bernard Newman of the Court of International Trade grant-
ed the government's motion for summary judgment.¹ Recognizing
the same need for expeditious resolution observed by Judge
Newman, this court heard oral argument in special session on June
30, 1982.

Proclamation 4941

Proclamation 4941 limits entry (or withdrawal from warehouse
for consumption) of sugar to 220,000 short tons, raw value, between
May 11, 1982 and June 30, 1982, and thereafter to amounts set by
the Secretary of Agriculture. As authority for its promulgation, the
President cited section 201 of the Trade Expansion Act of 1962
(Act), in conformity with Headnote 2, Subpart A, part 10, schedule

*The Honorable Edward S. Smith, Judge of the Court of Claims, sitting by designation.

¹Association sought declaratory and injunctive relief. The government moved to dismiss because the court lacked jurisdiction, Association lacked standing, and the complaint failed to state a claim upon which relief can be granted. Recognizing the absence of factual dispute, the effect of the government's third asserted basis for dismissal, Association's acquiescence, and the rules of his court, Judge Newman deemed cross-motions for summary judgment pending and proceeded to the merits. In his Order, he denied the government's motions to dismiss, Association's application for declaratory and injunctive relief, and Association's motion for summary judgment.

1, of the Tariff Schedules of the United States (TSUS), and the International Sugar Agreement, 1977, Implementation Act (P.L. 96-236, 94 Stat. 336) (ISA).²

Under § 201(a) of the Act (19 USC 1821(a)),³ the President may proclaim such additional import restrictions as he may deem appropriate to carry out a trade agreement entered pursuant to section 201 between June 30, 1962 and July 1, 1967. The Proclamation cites, as such trade agreement, the Geneva (1967) Protocol of the General Agreement on Tariffs and Trade (GATT). The quota on sugar was stated to be in conformity with Headnote 2 of subpart A of part 10 of schedule 1 of TSUS, which had been added by Presidential Proclamation 3822 to the TSUS to reflect Note 1 of the Geneva Protocol.⁴

The President set forth in the Proclamation his finding that the quotas proclaimed were appropriate to carry out the trade agreement just described and the ISA, and "to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the [GATT]."

Statement by the President

In a May 5, 1982 press release, entitled "Statement by the President," the President described his action as proclaiming "an emergency import quota program to manage sugar imports"; referred to the action as "necessary to defend the domestic sugar support program mandated by Congress last year"; cited a cost to the govern-

²Proclamation 4941 includes:

Now, therefore, I, Ronald Reagan, President of the United States of America, by the authority vested in me by the Constitution and statutes, including section 201 of the Trade Expansion Act of 1962, section 301 of Title 3 of the United States Code, and the International Sugar Agreement, 1977, Implementation Act (P.L. 96-236, or Stat. 336), and in conformity with Headnote 2 of subpart A of part 10 of schedule 1 of the TSUS, do hereby proclaim until otherwise superseded by law, Section 301 of Title 3 merely authorizes the President to delegate authority to officials of the Executive Branch.

In view of our decision, it is unnecessary to discuss whether authority for Proclamation 4941 resides in the ISA.

³19 USC 1821(a) reads, in pertinent part:

(a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that any of the purposes stated in section 1801 of this title will be promoted thereby, the President may—

(1) After June 30, 1962, and before July 1, 1967, enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) Proclaim such modification or continuance of any existing duty or other import restriction, such continuance of existing duty-free or excise treatment, or such additional import restrictions, as he determines to be required or appropriate to carry out any such trade agreement.

⁴As set forth in Proclamation 4941:

1. Headnote 2 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202), hereinafter referred to as the "TSUS" provides, in relevant part, as follows:

"(i) * * * if the President finds that a particular rate not lower than such January 1, 1968, rate, limited by a particular quota, may be established for any articles provided for in item 155.20 or 155.30, which will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation. . . ."

"(ii) * * * any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations: . . ."

2. Headnote 2 was added to the TSUS by Proclamation No. 3822 of December 16, 1967 (82 Stat. 1455) to carry out a provision in the Geneva (1967) Protocol of the General Agreement on Tariffs and Trade (Note 1 of Unit A, Chapter 10, Part 1 of Schedule XX; 19 U.S.T., Part II, 1282). The Geneva Protocol is a trade agreement that was entered into and proclaimed pursuant to section 201(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1821(a)). Section 201(a) of the Trade Expansion Act authorizes the President to proclaim the modification or continuance of any existing duty or other import restriction or such additional import restrictions as he determines to be required or appropriate to carry out any trade agreement entered into under the authority of that Act.

ment of "up to \$400 million" in sugar purchases if massive imports were not prevented; reported a precipitate drop in the world sugar price to less than 9 cents a pound and the consequent inability to further defend the support program with duties and fees alone under Section 22 of the Agricultural Adjustment Act of 1933; explained the apportionment of quotas among exporting countries and the quarterly adjustment of the total quota by the Secretary; stated that "[t]he objective is to defend the domestic support program" and avoid forfeiture of domestically produced sugar to the government, while providing foreign supplies "reasonable access to a stable, higher priced U.S. market"; and expressed solicitude for Caribbean Basin countries and the Caribbean Basin Initiative.

ISSUE

The dispositive issue is whether the President acted within his delegated authority in issuing Proclamation 4941.⁵

OPINION

Section 201(a) specifically authorizes the President to impose those fees and quotas on imported sugar he deems appropriate "to carry out . . . any trade agreement" entered pursuant to Section 201 between June 30, 1962 and July 1, 1967. Hence Association, if it is to meet its challenger's burden, must establish that the authority on which Proclamation 4941 is premised, is not "such" a trade agreement. It is necessary in this case to tour the labyrinthine wonderland of trade agreements, TSUS provisions, presidential proclamations, and congressional enactments concerned with importation. Having done so, we conclude that [2] the Geneva Protocol is a trade agreement under § 201 and that Note 1 is a part thereof.

During the 1949 GATT negotiations in Annecy, the United States reduced the most favored nation rate of duty on sugar and agreed that the concession there entered would be effective while Title II of the Sugar Act of 1948 or equivalent legislation was in effect.⁶

In the 1951 GATT negotiations in Torquay, this proviso was added:

Provided, That, if the President of the United States finds that a particular rate not lower than the rate specified above,

⁵All arguments and assertions appearing in the record have been considered, whether or not argued at the special session of this court on June 30, 1982.

We affirm the denial of the government's motion to dismiss based on lack of standing, for the reasons cited by Judge Newman, *United States Cane Sugar Refiners' Association v. Block*.—CIT—, Slip Op. 82-44 (June 5, 1982). Respecting jurisdiction under § 1581(i), we note the provision of injunctive powers to the Court of International Trade in the Customs Courts Act of 1980 and the special circumstances of this case which, absent that provision, would have required Association to present its case to the District Court. We are persuaded that in this case, involving the potential for immediate injury and irreparable harm to an industry and a substantial impact on the national economy, the delay inherent in proceeding under § 1581(a) makes relief under that provision manifestly inadequate and, accordingly, the court has jurisdiction in this case under § 1581(i).

The government's motion to dismiss for failure to state a claim, and the denial of Association's motion for summary judgment, are subsumed in our affirmation of summary judgment for the government.

⁶Annecy Protocol, Oct. 10, 1949, Annex A, Sched. XX, pt. I, 64 Stat. B145, at B324.

limited by a particular quota, may be established for any product provided for in this item, which will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties, he shall proclaim such rate and such quota limitation, to be effective not later than the 90th day following the termination of the effectiveness of such legislation: *Provided further*, That any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations: *And provided further*, That the provisions of this item preceding this note shall resume full effectiveness, subject to the provisions of this note, if legislation substantially equivalent to Title II of the Sugar Act of 1948 should subsequently become effective.⁷

[3] The Geneva Protocol is dated June 30, 1967, and is thus within the agreement entry period specified in § 201(a). It was entered as part of the "Kennedy Round" of GATT negotiations, and contained a sugar importation provision substantially identical with the Torquay proviso and designated NOTE 1, Unit A, Chapter 10, Part I, Schedule XX; 19 U.S.T., Part II, 1281. To reflect the Protocol, the [4] language of Note 1 was added, virtually verbatim, to the TSUS by Proclamation 3822 on December 16, 1967 (82 Stat. 1455), as Headnote 2. The full text of Headnote 2, a part of which is quoted in Proclamation 4941, *supra*, footnote 4 is:

1. The concessions provided for in prior schedules XX in respect of articles provided for in items 155.20 and 155.30 in this unit shall be effective only during such time as title II of the Sugar Act of 1948 or substantially equivalent legislation is in effect in the United States, whether or not the quotas, or any of them, authorized by such legislation, are being applied or are suspended: *Provided*,

(i) That, if the President of the United States finds that a particular rate not lower than the rate specified in such concessions, limited by a particular quota, may be established for any product provided for in such concessions, which will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties, he shall proclaim such rate and such quota limitation, to be effective not later than the 90th day following the termination of the effectiveness of such legislation;

(ii) That any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations; and

(iii) That the provisions of such concessions shall resume full effectiveness, subject to the provisions of this note, if legislation substantially equivalent to title II of the Sugar Act

⁷Torquay Protocol, Annex A, Sched. XX, p. I, item 501, 3 U.S.T. 615, at 1171. The Torquay proviso was made part of our law by Presidential Proclamation 2929 of June 2, 1961. See 86 T.D. 121, 227 (1961).

of 1948 should subsequently become effective. [Footnote omitted.]

The Sugar Act of 1948 expired in 1974.⁸ Within the 90-day period specified in Headnote 2, the President proclaimed a duty and quota on sugar by Proclamation 4334 of November 16, 1974.⁹ There have since been nine modifications to that duty and quota.

Thus, beginning at least as early as 1951, duties and quotas on sugar have been part and parcel of negotiations made part of our domestic law by presidential proclamation. Indeed, the very language of the Torquay proviso, "if the President . . . finds . . . limited by a particular quota . . . will give due consideration to . . . domestic producers and . . . contracting parties . . . he shall proclaim such rate and quota," is traceable without substantial change into Note 1 of the Geneva Protocol and into Headnote 2. The language of Headnote 2 quoted in Proclamation 4941 includes an authorization to modify existing quotas. Whether the President's action here at issue be viewed as the imposition of a new quota or as a modification of a quota in existence since at least 1974, it cannot be gainsaid that [5] the President was acting within the authority delegated to him in § 201 of the Trade Expansion Act of 1962 when, in conformity with Headnote 2, he issued Proclamation 4941 to carry out the trade agreement embodied in the Geneva Protocol of the Kennedy Round, of which Note 1 as reflected in Headnote 2 is an integral part.¹⁰

Association, pointing to the "Statement of the President" contemporaneous with Proclamation 4941, argues strenuously that the President's "real purpose" in issuing the challenged proclamation was to avoid government expenditures under the sugar price support program, and that the only authority for employing import restrictions to achieve that purpose is Section 22 of the Agriculture Adjustment Act of 1933, an authority already exhausted by imposition of duties under that section. The argument need not detain us long.

[6] The President's action being authorized by the statute on which he relied, his motives, his reasoning, his finding of facts requiring the action, and his judgment, are immune from judicial

⁸ Since 1974, the United States has been without a single, comprehensive sugar policy, management being conducted under one or more of the authorities present in Headnote 2, Titles II and III of the Agriculture Act of 1949 (7 USC 1421), Section 22 of the Agriculture Adjustment Act of 1933 (7 USC 624), and the ISA.

⁹ 39 F.R. 40739, November 20, 1974. Association says presidential actions under Headnote 2 are simply intended to prevent the non-concessional rate of duty (1.9875 cents per lb.) from "snapping back." Association also says earlier quotas were non-restrictive. As indicated in the text, arguments that do not establish an absence of presidential authority to issue Proclamation 4941 are unavailing.

¹⁰ Association submitted the affidavit of Professor John H. Jackson, wherein he offered the opinion that "[t]here seems . . . to be no intentional reason for the inclusion of . . . Note 1 in the Geneva Protocol, except for information purposes", basing his opinion on the shading of items 155.20 and 155.30 and the statement in a General Note that shaded items "facilitate an understanding of the scope of the tariff rate concessions herein" but "do not themselves describe such concessions". The statement relied upon deals with tariff rates. Note 1, which is not shaded, deals with quotas. Whatever may have been the purpose of including shaded items in Schedule XX, that purpose cannot affect the presence of Note 1 in the Geneva Protocol. In Note 1, the United States bound itself, as it had in the past, to maintain a system of sugar imports involving duties and quotas. If quotas are not established by legislation, the Note provides that the President shall establish them "not later than the 90th day following the termination of" prior legislation.

scrutiny. *United States v. George S. Bush & Co., Inc.*, 310 U.S. 371 (1939). Beyond the truism that an action may be multi-purposed, and the distinction between the proclamation that is in issue and the press release that is not, Association's concentration on what it insists was the President's real purpose is simply irrelevant. Grist it may be for the executive or legislative mills; grist it cannot be for the mills of the judicial branch. In sum, let the President's action be authorized, and let his action be within the authorizing provisions of the law he cites, and the role of the judiciary is at an end.¹¹

Equally untenable are Association's contentions that Proclamation 4941 is contrary to GATT and inconsistent with ISA. Concessions under GATT have traditionally included quotas as well as duties. The Geneva Protocol was not, as Association contends, limited to tariffs (duties). The Protocol itself states that negotiations were conducted pursuant to "other relevant provisions . . . on . . . non-tariff barriers." As above indicated, United States quotas on imported sugar have been recognized in GATT concessions since the Annecy Protocol of 1949.¹² Article 58 of ISA does not prohibit quotas, but merely requires each developed member to adopt "measures compatible with its domestic legislation as it deems appropriate" to ensure access to its market. Proclamation 4941 does ensure access, albeit limited, to the U.S. market.

CONCLUSION

The President's action in promulgating Proclamation 4941 was a valid exercise of the authority provided in § 201 of the Trade Expansion Act of 1962 in conformity with Headnote 2. Accordingly, the grant of summary judgment to the government in this case is affirmed.¹³

¹¹It is therefore unnecessary to discuss Association's several arguments based on its assertion that the purpose of Proclamation 4941 was to avoid government outlays under the sugar price support program: (1) that Section 22 is the only possible authority for the President's action; (2) that Section 22 was foreclosed to the President because duties had been imposed and Section 22 does not permit duties and quotas, as set forth in *United States v. The Best Foods, Inc.*, 47 CCPA 163 (1960); and (3) that Section 22 is more specific than § 201. Nor is it necessary to discuss the countervailing arguments: (1) that § 201, in conformity with Headnote 2, supplies alternative authority, independent of that provided in Section 22; (2) that Congress has expressed its acquiescence in use of § 201 and Section 22 to impose duties and quotas, and has expressed its intent that both be used to protect the sugar price support program; and (3) that § 201 is the more specific because it deals with sugar while Section 22 deals with commodities generally.

¹²Congressional reliance on that recognition is illustrated in House Ways and Means Committee Report No. 95-1484, Part II, 95th Cong., 2d Sess. 33-35.

¹³Association's concern for what it sees as increased prices to be paid by "consumers" is inappropriately expressed in the courtroom. Numerous citizens are consumers of sugar. All citizens are "consumers" of government. Whether it is more important to the nation that citizens should pay 10 cents per pound more for sugar, than it is for citizens to pay \$400 million more for government, is a societal/political question the answer to which is relegated under our constitutional system to presidents and legislators, not to judges.

U.S. CUSTOMS SERVICE

General Notice

19 CFR Part 123

CUSTOMS FORM 7533; INVITATION TO THE PUBLIC TO COMMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to Customs proposal to eliminate Customs Form 7533 (Inward Cargo Manifest For Vessel Under Five Tons, Ferry, Train, Car, Vehicle, Etc.) and develop a new standardized form to be used nationwide. A document inviting the public to comment on the petition was published in the *FEDERAL REGISTER* on April 21, 1982, (47 FR 17072). Comments were to have been received on or before June 21, 1982. A request has been received from a railway association to extend the period for the submission of comments claiming that additional time is needed to submit thorough comments from its members. Customs believes that the request has merit. Accordingly, the period of time for the submission of written comments is extended to August 21, 1982.

DATES: Comments must be received on or before August 21, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Patricia Anson, Cargo Processing Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5354).

Dated: July 19, 1982.

JOHN P. SIMPSON,
Director, Office of Regulations and Rulings.

[Published in the Federal Register, July 22, 1982 (47 FR 31708)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson

Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 82-52)

Court No. 74-2-00352

ORIENTAL EXPORTERS, INC., PLAINTIFF *v.* UNITED STATES,
DEFENDANT

Before WATSON, *Judge*.

DECISION

Valuation—Buying Agency Relationship

Plaintiff proved that it acted as a buying agent with respect to merchandise imported from Taiwan. Consequently, the five percent of the invoice prices, representing its buying commission, should not have been included in the appraised values. Additional services provided by the plaintiff are examined and are found to be consistent with its role as a buying agent.

[Judgment for plaintiff.]

(Dated July 7, 1982)

Fitch, King and Caffentzis, (Richard C. King and James Caffentzis at the trial and on the brief) for the plaintiff.

J. Paul McGrath, Assistant Attorney General; Joseph Liebman, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (Susan Handler-Menahem, at the trial and on the brief) for the defendant.

WATSON, *Judge*: This action challenges the inclusion of amounts equal to five percent of the invoiced f.o.b. prices in the appraised values of schoolbags imported from Taiwan. The parties have agreed that the disputed amounts are severable from the otherwise correctly appraised export values. The action is therefore limited to the claim of plaintiff Oriental Exporters, Inc. (Oriental) that the five percent was a buying commission it received for services rendered to the Feldco Major Company (Feldco) which, under established law, should not form part of the appraised value.

The Court, after considering the evidence regarding the relationship between Oriental and Feldco finds that plaintiff Oriental has proven by a preponderance of the evidence that it was acting as a buying agent with respect to the imported merchandise.

In reaching this conclusion the Court finds that plaintiff was subject to the control and direction of Feldco and was not, as urged by defendant, an agent of the manufacturers or a buyer and reseller of this merchandise. This conclusion is supported by evidence of the contractual relationship between the parties, by proof that Oriental was not otherwise related to Feldco or the manufacturers, and by specific examples of its subjection to the control of Feldco. *J.C. Penney Purchasing Corp. et al. v. United States*, 80 Cust. Ct. 84, 95, C.D. 4741, 451 F. Supp. 973 (1978).

The Court finds that a pre-existing buying agency agreement between plaintiff and Feldco, covering merchandise manufactured in Hong Kong and Japan, was, in effect, extended to Taiwan in all principal respects. The single difference, stressed by defendant, that in shipments from Taiwan, Oriental was to be listed as the shipper, did not alter the relationship.

The evidence establishes that Oriental's affiliated office in Taiwan acted on behalf of Feldco and subject to its control. The Taiwan office, on the request of Feldco, or on its own initiative, lo-

cated manufacturers and informed Feldco of the availability of merchandise and its price. It assisted the President of Feldco in meeting the manufacturers to negotiate the prices and delivery terms of merchandise which he had designed. It made sure that orders were being filled, inspected merchandise during manufacture and arranged for shipping. It did not have the power to order merchandise or change the terms of an order without Feldco's approval. It did not have showrooms or inventories of the imported merchandise. Its only rather minor independent power was the authority to change the shipping vessel so long as the arrival date in the United States was not altered.

Plaintiff also financed purchases made by Feldco in Taiwan by opening a letter of credit against which the manufacturers presented drafts for payment. In addition, it paid shipping and insurance, and sometimes entered the merchandise in the United States, and paid the customs duties. For these latter expenditures, it was reimbursed by Feldco apart from the five percent buying commission.

In the opinion of the Court, these circumstances show the existence of a principal-agent relationship between Feldco and Oriental, the nature of which relationship was not altered by the variety of additional services provided.

The evidence relied on by the defendant in support of its contention that plaintiff was controlled by the Taiwanese manufacturers, or that it bought and sold for its own account was imprecise and was not entitled to great weight. For example, a customs agent's report (Defendant's Exhibit A) stating that one of the manufacturers sold only through agents, to whom it paid commissions, was outweighed by the testimony of Feldco's president that he used plaintiff as a buying agent by choice and the testimony of one of the owners of plaintiff that it never received any payment from the manufacturers. Moreover, the report in question contained nothing specific with respect to the relationship between the manufacturer and either Oriental or Feldco.

In addition, a price list on plaintiff's stationery (Plaintiff's Exhibit 3) did not indicate independent selling by Oriental in view of more persuasive evidence to the contrary, particularly, testimony that it was a price quotation obtained by plaintiff for Feldco from a manufacturer. In the same vein, the appearance of Oriental as the purchaser on the manufacturer's invoices was adequately explained as a requirement of the bank in which plaintiff had opened the previously mentioned letter of credit for payment of the manufacturers. Moreover, the later Special Customs Invoices show Feldco as the purchaser.

Finally, the occasional entry of the merchandise by plaintiff was contemplated by the buying agency agreement and was not inconsistent with its role as an agent of Feldco. In all, the evidence does not show that Oriental bought or sold this merchandise as an independent company or acted as an agent of the manufacturer.

A preponderance of the evidence shows that plaintiff acted as Feldco's buying agent in Taiwan. The disputed five percent of the invoice price represents a *bona fide* buying commission and, as such, should not have been included in the appraised values. *United States v. Nelson Bead Co.*, 42 CCPA 175, C.A.D. 590 (1955). Judgment will enter accordingly.

(Slip Op. 82-53)

BABCOCK & WILCOX CO., INC., PLAINTIFF *v.* THE UNITED STATES,
DEFENDANT

Consol. Court No. 80-5-00772

Before BOE, Judge.

*Memorandum Opinion and Order Dismissing the Above-entitled
Action and the Accompanying Opinion and Order (Slip Op. 81-
75) As Moot*

[Defendant's motion to dismiss the above action and to vacate the accompanying opinion and order (Slip Op. 81-75), granted. Plaintiff's (cross-) motion to dismiss the above action only as to certain product lines, or in the alternative, for an evidentiary hearing on whether the defendant has complied with the stipulation between the parties, denied.]

(Dated: July 9, 1982)

Harris, Berg & Creskoff (Stephen M. Creskoff and Brian E. McGill on the brief) for the plaintiff.

J. Paul McGrath, Assistant Attorney General; David M. Cohen, Director Commercial Litigation Branch, (Francis J. Sailer on the brief), for the defendant.

BOE, Judge: The defendant has moved to dismiss the above-entitled action and to vacate the order and opinion of the court in connection therewith (Slip Op. 81-75), alleging that said action is moot.

The plaintiff in opposing defendant's motion contends that a breach of agreement on the part of the defendant vitiates the stipulation which had been entered into between the parties providing for a dismissal of the above-entitled action and the vacation of the order and opinion made in connection therewith.

The plaintiff also (cross-) moves to dismiss the above action only as to certain product lines, or in the alternative, for an evidentiary hearing on whether the defendant has complied with the stipulation between the parties.

A brief review of the background relating to the instant proceedings is appropriate.

The above action was instituted by the plaintiff in this court, seeking judicial review of the negative injury determination made by the International Trade Commission (ITC) in an antidumping investigation of certain categories of pipe and tube products imported from Japan.

An order was entered by this court on August 20, 1981, remanding the action to the ITC for the purpose of properly applying the guidelines of the statute (19 U.S.C. § 1677(4)(D)) in connection with product line assessments.

Subsequent to the entry of the court's remand order, a motion was jointly filed by the parties requesting the suspension of all proceedings in the above action pending the filing of a new antidumping petition by the plaintiff.

The court, granting the joint motion submitted by the parties hereto, ordered that further court and administrative proceedings were suspended pending the filing of a new antidumping petition by plaintiff within 90 days of the date thereof and the commencement of an investigation by the Commerce Department pursuant to 19 U.S.C. § 1673a(b).

The joint motion for suspension of all proceedings was accomplished by a stipulation entered into by counsel for the respective parties, whereby it was agreed:

(1) Plaintiff may file, at any time, an updated antidumping petition pursuant to 19 U.S.C. § 1673a(b), which shall contain recent economic data which Plaintiff believes supports its position of sales of the relevant Japanese pipe and tube products at less than fair value and of material injury to the relevant domestic industries;

(2) The instant action shall be dismissed upon the acceptance by the Department of Commerce of such an updated petition and the institution of an investigation by publication of notice in the *FEDERAL REGISTER*;

(3) The Commission shall upon referral of the Plaintiff's new antidumping petition to it pursuant to 19 U.S.C. § 1673a(b), attempt to obtain all available data in order to assess the possible effect of dumped imports upon the production of the relevant like products where the economic data submitted to and obtained by the Commission permit the separate identification of the production of each of the product lines addressed in the new petition in terms of such criteria as the production process or producer's profits, pursuant to 19 U.S.C. § 1677(4)(D); and

(4) The parties shall jointly move to vacate this Court's opinion and order, dated August 20, 1981 (Slip Op. 81-75), in view of the fact that all issues involved in the judicial review proceeding will be rendered moot in view of the foregoing.

The plaintiff filed a new, updated antidumping petition with the Department of Commerce and the ITC, including therein three of the five product lines involved in the above action. The petition was accepted by the Department of Commerce and an investigation was instituted by notice published in the *FEDERAL REGISTER*.

In its preliminary determination the ITC found a reasonable indication of material injury with respect to two of the product lines included in plaintiff's new, updated petition and made a negative finding with respect to the third product line.

The plaintiff opposes the motion to dismiss the above action and to vacate the prior opinion and order of the court (Slip Op. 81-75), contending that the stipulated agreement has been breached by the Commission's refusal to follow the criteria provided for in the stipulation.

The defendant has cited numerous authorities for the proposition that a decision on the merits of an action that has become moot prior to the resolution of the case in an appellate court should be dismissed and vacated. As stated in *United States v. Munsingwear, Inc.*, 340 U.S. 36, 41 (1950), the vacation of such decisions is required in order to "prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." However, in the above action no final determination on the merits has been made.

In the above action the court by its order suspended further court and administrative proceedings "pending plaintiff's filing of a new antidumping petition." No provision for dismissal of the action or for a vacation of the court's prior opinion and order is contained in the order of suspension.

In the determination of the present motion to dismiss and vacate the above action, therefore, the court must look to and take its guidance from the joint motion for suspension of further court and administrative proceedings and the stipulation between the parties which have been filed with the court. The provisions therein contained are explicit.

In the motion to suspend all proceedings which was jointly filed by the respective parties with the court, it is expressly recognized:

The parties seek this suspension since Plaintiff's filing of an updated antidumping petition will, upon acceptance, result in the commencement of a new investigation which would render the investigation now on review moot. Furthermore, the parties have agreed that this case may be dismissed, and Slip Op. 81-75 (opinion and order) vacated, as moot, *since the pendency of a new investigation will render the instant action moot.* Thus, further court or administrative proceedings upon the instant action would be obviated. [Emphasis supplied.]

In a footnote to the aforementioned statement it is further acknowledged:

Because the parties have stipulated to a dismissal of this action upon the acceptance by Commerce of an updated petition and the institution of an investigation, 'the appropriate [sic] action . . . is to vacate the judgment previously rendered. . . . This would effectively prevent the judgment below from becoming a precedent.' *Swingline, Inc. v. I. B. Kleinert Rubber Company*, 399 F. 2d 283, 284-285 (CCPA 1968).

The stipulation between the parties, accompanying the joint motion for suspension and filed with the court, provides that the dismissal of the instant action shall occur, (1) upon the acceptance of plaintiff's updated antidumping petition by the Commerce Department, and (2) upon the publication of the notice of the institu-

tion of an investigation in the *Federal Register*. It is without dispute that the foregoing conditions precedent have been complied with. The agreement to dismiss the instant action, therefore, becomes a binding and enforceable obligation upon each party to the stipulation. See *John McShain v. United States*, 375 F. 2d 829, 831 (Ct. Cl. 1967); *Vallejos v. C. E. Glass Co.*, 583 F. 2d 507 (10th Cir. 1978).

Clearly, the foregoing instruments evidence the intent and the agreed understanding of the parties that, upon the entry of the court's order suspending further court and administrative proceedings and the filing and acceptance of a new antidumping petition, the instant action and Slip Op. 81-75, made in connection therewith, are moot.

The filing of a new petition by the plaintiff can only be viewed as an election to discontinue the pursuit of the above consolidated action in this court and to seek in lieu thereof a new administrative determination based upon a record containing updated economic information. It, indeed, would be an anomaly to permit the plaintiff to pursue its remedies for the same grievance concurrently in two independent proceedings.

The failure of the plaintiff to include all of the categories of pipe and tube products in its new antidumping petition, which had been formerly included in the above action, cannot serve as a justification to ignore the express and unambiguous provisions of the stipulation.¹

Plaintiff contends that the Commission in its injury determination with respect to plaintiff's updated antidumping petition has ignored the criteria contained in 19 U.S.C. § 1677(4)(D) and in so doing has breached the express obligation provided for in the stipulation agreement entered into between the parties. The alleged breach, as urged by the plaintiff, cannot be said to breathe life anew into the instant action, which has been rendered moot by the execution of the stipulation agreement and the institution of a new administrative proceeding, as provided for therein. It is the stipulation, voluntarily entered into between the parties, which is the source of plaintiff's right to file a new antidumping petition and which creates the Commission's obligation in conducting a new injury investigation. The alleged failure of the Commission to fulfill its commitment, as provided for in the said stipulation, can only be ascertained when this court has before it the record of the administrative proceedings and is not a proper question for determination at this time. In determining the defendant's motion, the court has considered and addressed itself only to the present status of the above action and its accompanying opinion and order, which the court finds have become moot by virtue of the provisions of the

¹Plaintiff's brief indicates that two categories of tubing were not included in the updated antidumping petition because they were covered by the trigger price mechanism. However, the response of *Nippon Steel Corp.*, amicus curiae, to plaintiff's assertion advises the court that plaintiff's updated antidumping petition was filed nine days after the Department of Commerce had suspended the trigger price mechanism.

stipulation entered into between the parties for the express purpose of instituting a new up-to-date antidumping proceeding. *United States v. Associated Dry Goods Corp.*, CCPA No. 82-18, July 1, 1982.

Accordingly, it is hereby

Ordered that the motion of the defendant be and is hereby granted and the (cross-) motion of the plaintiff denied, and it is further

Ordered that the above-entitled consolidated action be and is hereby dismissed and the opinion and order of the court made therein under date of August 20, 1981 (Slip Op. 81-75), vacated.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DEPARTMENT OF THE TREASURY, July 12, 1982.

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R22/439	Maletz, J. July 7, 1982	Voss International Corp	75-8-02154	U.S. Tariff Commission under the Antidumping Act of 1921 assessed dumping duties	Amount of dumping duties to be assessed on the involved merchandise is set forth on schedule A attached to decision and judgment	Agreed statement of facts	Los Angeles Aubessira cement pipe

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, July 21, 1982.

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Custom officers and others concerned.

WILLIAM VON RAAB.
Commissioner of Customs.

Investigation No. 701-TA-183 (Final)

Potassium Permanganate From Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigation.

SUMMARY: As a result of a final determination by the United States Department of Commerce that the government of Spain is providing its producer and exporter of potassium permanganate with certain benefits which constitute a subsidy within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. § 1671), the United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-183 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of potassium permanganate provided for in item 420.28 of the Tariff Schedules of the United States. This investigation will be conducted according to the provisions of part 207, subpart C, of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76458).

EFFECTIVE DATE: July 6, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Johnson, Office of Industries, U.S. International Trade Commission, Room 109, 701 E Street, NW., Washington, D.C. 20436; telephone 202-523-0127.

SUPPLEMENTARY INFORMATION:

Background: On July 6, 1982, the Department of Commerce published its final determination that the government of Spain has provided its sole producer and exporter of potassium permanganate with a net subsidy of 0.74 percent of the f.o.b. value of the imported merchandise. The Commerce investigation commenced as a result of a petition filed on November 10, 1981, by counsel on behalf of the Carus Chemical Co., of La Salle, Illinois. At the time of the filing Spain was not a "Country under the Agreement" and was not entitled to a preliminary material injury investigation by the Commission. A preliminary negative determination was made by the Department of Commerce, effective the date that Spain became a "Country under the Act," in accordance with section 102(a)(2) of the Trade Agreements Act of 1979. In such circumstances, the U.S. International Trade Commission is given 75 days from the date of the final affirmative determination in which to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of the imports that have been found by the Commerce Department to be subsidized.

A staff report containing preliminary findings of fact will be available to all interested parties on July 30, 1982.

Service of documents.—Any interested person may appear in this investigation as a party, either in person or by representative, by filing an entry of appearance with the Secretary in accordance with section 201.11 of the Commission's rules (19 CFR § 201.11). Each entry of appearance must be filed with the Secretary no later than 21 days after the publication of this notice in the **FEDERAL REGISTER**.

The Secretary will compile a service list from the entries of appearance filed in this final investigation. Any party submitting a document in connection with these investigations shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR § 201.8), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR § 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission a written statement of information pertinent to the subject of these investigations. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission on or before August 18, 1982. All written submissions except

for confidential business data will be available for public inspection.

Any business information for which confidential business treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6).

PUBLIC HEARING: The Commission will hold a public hearing in connection with this investigation on August 12, 1982, in the Hearing Room of the U.S. International Trade Commission Building, beginning at 10 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.) on July 30, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10:00 a.m., e.s.t., on August 5, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing statements must be filed on or before August 9, 1982.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules of Practice and Procedure (19 CFR § 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing statements and to new information. The Commission will not receive prepared testimony for the public hearing, as would otherwise be provided for by rule 201.12(d). All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing statements in accordance with section 207.22.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201).

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20, 44 F.R. 76472).

By order of the Commission.

Issued: July 14, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN AUTOMOTIVE VISORS

} Investigation No. 337-TA-117

Notice of Request for Public Comments on Recommended Termination of Two Respondents Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Request for public comments on the recommended termination of Toyota Motor Sales Co., Ltd., of Japan, and Toyota Motor Sales, U.S.A., Inc., as respondents in the above-captioned investigation, on the basis of a settlement agreement.

SUMMARY: On May 13, 1982, complainant Prince Corporation (Prince), Toyota Motor Sales Co., Ltd. (TMS), Toyota Motor Sales, U.S.A., Inc. (TMS-USA), of California, and the Commission investigative attorney filed a joint motion to terminate the above-captioned investigation with respect to TMS and TMS-USA on the basis of a settlement agreement entered into between Prince, TMS, and TMS-USA. On June 8, 1982, the presiding officer recommended that the joint motion be granted. Before taking final action on the motion, the Commission seeks written comments on the proposed termination from interested members of the public. A non-confidential synopsis of the settlement agreement is set forth below.

DEADLINE: All comments must be received within thirty (30) days of publication of this notice.

SUPPLEMENTARY INFORMATION: The Commission is conducting investigation No. 337-TA-117 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation and sale of certain automotive visors, which are alleged to infringe certain claims of U.S. Letters Patent Nos. 3,926,470 and 4,227,241, owned by complainant Prince. The alleged effect or tendency of these unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The settlement agreement between Prince, TMS, and TMS-USA is based on a paid-up limited license agreement which became effective May 1, 1982, between TMS and Prince. Under the agreement, Prince agrees to accept a certain lump-sum payment for a paid-up, nonexclusive, irrevocable, limited license under and during the life of the two U.S. patents in issue. The limited license allows the importation into the United States of Toyota motor vehicles equipped with visor assemblies, and of replacement visor assemblies as disclosed and claimed in the subject patents. Similar rights are granted with respect to counterpart patents or patent applications in Canada, the United Kingdom, and the Federal Republic of Germany. The lump-sum payment is in full settlement of all claims between Prince and TMS or TMS-USA arising out of the Commis-

sion investigation and a related federal court action in Michigan. TMS and TMS-USA consent to the validity of the patents in issue. The agreements are in compromise of disputed claims, and TMS and TMS-USA admit no liability.

Copies of any nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

By order of the Commission.

Issued: July 12, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN SNEAKERS WITH FABRIC UPPER AND RUBBER SOLES	}	Investigation No. 337-TA-118
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Notice

Notice is hereby given that the prehearing conference and hearing scheduled for July 19, 1982 (47 Fed. Reg. 26258, June 17, 1982) are cancelled. At the request of the parties, the prehearing conference is rescheduled for September 7, 1982 at 9:00 a.m. in the Waterfront Center, Room 201, 1010 Wisconsin Avenue, N.W., Washington, D.C., and the hearing shall commence immediately thereafter.

The Secretary shall publish this Notice in the Federal Register.
Issued: July 9, 1982.

JANET D. SAXON,
Administrative Law Judge.

In the Matter of CERTAIN METHODS FOR EXTRUDING PLASTIC TUBING	}	Investigation No. 337-TA-110
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Commission Hearing on the Presiding Officer's Recommendation and on Relief, Bonding, and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337-TA-110, Certain Methods for Extruding Plastic Tubing.

Notice is hereby given that the presiding officer has issued a recommended determination that there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the unauthorized importation into the United States and sale of certain extruded plastic tubing and reclosable plastic bags that are the subject of the Commission's investigation. Accordingly, the recommended determination and the record of the hearing have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents on the record of the investigation) by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202-523-0161.

COMMISSION HEARING: The Commission will hold a public hearing on July 15, 1982, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties.

ORAL ARGUMENTS: Any party to the Commission's investigation or any interested Government agency may present an oral argument concerning the presiding officer's recommended determination. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons making oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the presiding officer.

ORAL PRESENTATIONS ON RELIEF, BONDING, AND THE PUBLIC INTEREST: Following the oral arguments on the presid-

ing officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in this order: complainant, respondents, Government agencies, the Commission investigative attorney, public-interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) an order which could result in one or more respondents' being required to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

TIME LIMIT FOR ORAL ARGUMENT AND ORAL PRESENTATION: Parties and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interests. Persons making only oral presentations on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

WRITTEN SUBMISSIONS: In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on July 8, 1982; written submissions on the questions of remedy, bonding, and the public interest must be filed not later than the close of business on July 12, 1982. During the course of the hearing, the parties may be asked to file posthearing briefs.

NOTICE OF APPEARANCE: Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by July 12, 1982.

ADDITIONAL INFORMATION: The original and 14 true copies of all briefs on violation must be filed with the Office of the Secretary not later than July 8, 1982; the original copy and 14 true copies of all briefs on remedy, bonding, and the public interest must be filed with the Office of the Secretary not later than July 12, 1982. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request in camera treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for in camera treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the *Federal Register* of November 12, 1981, 46 F.R. 55797.

FOR FURTHER INFORMATION CONTACT: Eliza R. Patterson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

By order of the Commission.

Issued: July 7, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN METHODS FOR
EXTRUDING PLASTIC TUBING

} Investigation No. 337-TA-110

Notice of Termination of Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondent Sue Trading Co.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondent Sue Trading Co. (Sue) on the basis of representations contained in a motion to terminate filed by respondent Sue.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and 19 U.S.C. § 1337a and concerns alleged unfair trade practices in the importation and sale of certain extruded plastic tubing and reclosable plastic bags allegedly made by a process which, if practiced in the United States, would infringe patents owned by complainant Minigrip, Inc.

The motion to terminate was based generally on the grounds that Sue's involvement in this investigation is *de minimus*, that has not imported reclosable plastic bags since 1976, that it has nothing further to contribute to this adjudication, that continued participation in the investigation will create undue hardship and expense to respondent, and that the termination of the respondent would not affect detrimentally the conclusion of this investigation.

The motion was opposed by the complainant and the Commission investigative attorney on the grounds that there is a conflict between the allegations of the complaint that Sue openly sells imported Taiwanese reclosable plastic bags and Sue's factual representation in its motion which should be resolved based on presentation of evidence at the trial. However, the trial has now been concluded and no evidence was offered to contradict Sue's representations. Complainant also filed no response to an order to show cause why Sue should not be terminated.

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Eliza Patterson, Esq., Office of the General Counsel, Telephone 202-523-0480.

By order of the Commission.

Issued: July 9, 1982.

KENNETH R. MASON,
Secretary.

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